

JOURNAL OF  
SUSTAINABLE DEVELOPMENT  
LAW AND POLICY

AFE BABALOLA UNIVERSITY, ADO-EKITI, NIGERIA

---

VOLUME 7 ISSUE 1

SPRING 2016

---

Print ISSN: 2467-8406

e-ISSN: 2467-8392

***Journal of Sustainable Development Law and Policy***

is a publication of the Institute for Oil, Gas, Energy,  
Environment and Sustainable Development (OGEES)

Afe Babalola University, Ado Ekiti

8.5 Afe Babalola Way, Ado Ekiti

Ekiti State, Nigeria

E-mail: [info@ogeesinstitute.edu.ng](mailto:info@ogeesinstitute.edu.ng)

Tel: +234 81 40000 988



Institute for Oil, Gas, Energy,  
Environment and Sustainable  
Development

All rights reserved. No part of this publication may be reproduced or transmitted in any form or means, or stored in any retrieval system of any nature without the prior written permission of the Institute for Oil, Gas, Energy, Environment and Sustainable Development, Afe Babalola University, Ado Ekiti, Nigeria. Applications for permission should be made to the Editor-in-Chief.

Printed in Nigeria.

**Citation:** Cite as (2016) 7 (1) Journal of Sustainable Development Law and Policy, Afe Babalola University, Nigeria

***Journal of Sustainable Development Law and Policy***

**Print ISSN 2467-8406**

e-ISSN 2467-8392

*Volume 7 (1) 2016*

*The Journal of Sustainable Development Law and Policy* is a peer-reviewed interdisciplinary journal published by the Institute for Oil, Gas, Energy, Environment and Sustainable Development, Afe Babalola University, Ado Ekiti, Nigeria. It is published in June and October by the Afe Babalola University Press, Nigeria.

The Journal promotes the dissemination of research results and scholarly papers by teaching and research scholars in Africa and across the world in broad areas of sustainable development law and policy. The thematic focus of the journal cover sustainable development law and policy, ranging from the economic, social and environmental dimensions. As such, papers that explore broad themes of sustainable development such environment, natural resources, green economy, international trade, banking, taxation, public policy, public private partnerships, alternative dispute resolution, human rights, peace, and conflict studies are normally given top consideration.

The Editorial Board of the Journal comprises international development scholars and experts from Italy, United Kingdom, Indonesia, Nigeria, Canada and the United States who provide leadership and lend their expertise to promote and enhance the scholarly relevance of the journal internationally.

*The Journal of Sustainable Development Law and Policy* is archived on Google Scholar and on African Journals Online, South Africa (<http://www.ajol.info/index.php/jsdlp/index>). The Journal is available online for download. Subscriptions are also welcome for hard copies at the standard rates. A discounted rate is provided for institutional subscriptions from universities, colleges and corporate organizations.

For more information or to order your copies, please contact: [info@ogeesinstitute.edu.ng](mailto:info@ogeesinstitute.edu.ng), Tel: +234 81 40000 988.

## **CORRESPONDENCE AND SUBMISSIONS**

The Editorial Committee of *Journal of Sustainable Development Law and Policy (JSDLP)*, Afe Babalola University, Ado Ekiti welcomes the submission of unsolicited manuscripts. We welcome submissions that focus on any aspect of sustainable development law and policy ranging from the economic, social and environmental dimensions. Consequently, papers that explore broad themes of sustainable development such as agriculture, banking, e-commerce, environment, natural resources, public private partnerships, alternative dispute resolutions, human rights, peace, and conflict studies would be most welcome. We also welcome book reviews, case comments and public lectures.

Selected articles would be published in hard copy and also prominently displayed on the institutional website as a resource for scholars and practitioners worldwide.

Papers must be based on original research, conform to the usual standard of academic publishing, be fully referenced and presented in the standard format employed by the series. Papers will be evaluated based on their contemporary relevance, contribution to their selected fields of research, structure and analytical vigour. Please refer to the submission guide below.

### **SUBMISSION GUIDELINES**

#### **Length and Footnotes**

- (1) Articles should be between 5000 and 8000 words and should advance legal scholarship and knowledge in a specific area of sustainable development law and policy.
- (2) Articles should include an abstract of approximately 250 words that is not an extract from the article itself.
- (3) Details of the author should be supplied as the first footnote, attached by an asterisk to the author's name.

#### **Form of Submission**

- (4) Articles must be submitted in MS Word format and sent as an email attachment to [info@ogeesinstitute.edu.ng](mailto:info@ogeesinstitute.edu.ng)
- (5) Contributions will only be considered for publication if they comply with the style guide. All citations should be as footnotes and accord

with the Oxford Guide for Legal Citation. A copy can be found at <[http://www.law.ox.ac.uk/published/OSCOLA\\_4th\\_edn.pdf](http://www.law.ox.ac.uk/published/OSCOLA_4th_edn.pdf)>

- (6) In terms of punctuation, where a quotation is made directly within the author's own sentences, only punctuation forming a part of it should fall within the quotation marks. For example, the author's text is "followed by a relevant quotation". All footnotes should follow the final punctuation mark of the sentence except where that mark is a colon or semi-colon.
- (7) **Authors should please make use of the following checklist prior to submission:**
- an abstract is included;
  - headings are consecutively numbered without automatic numbering;
  - headings are not underlined;
  - paragraphs are not separated by a full blank line, but only by an indent at the beginning of the new paragraph;
  - footnotes are consecutively numbered by way of automatic numbering;
  - footnotes are not separated by a full blank line;
  - footnotes appear at the end of each page of the manuscript and not at the end of the manuscript;
  - quotations have been checked for accuracy; and
  - references comply with the style requirements.

### **Deadlines**

We review articles on a rolling basis, for publication in any of our two editions published in a year. Authors should take note of the following deadlines:

**Spring Edition:** Only articles submitted on or before 12 noon on **31st March** would be considered for publication in the spring edition.

**Fall Edition:** Only articles submitted on or before 12 noon on **31st August** would be considered for publication in the Fall edition.

Deadlines are firm, articles submitted after the deadline may not be published. All papers should be submitted by email.

### **Evaluation**

- (9) Contributions are submitted to at least two referees and the identities of the contributors and referees are kept confidential.

(10) Further details about the Journal can be found at:  
<<http://www.ogeesinstitute.edu.ng/index.php/ogees-journal>>  
<<http://www.ogeesinstitute.edu.ng/index.php/research-publications>>

### **Questions and Enquiries**

All enquiries or questions should be directed to:

The Editor-in-Chief  
Journal of Sustainable Development Law and Policy  
Afe Babalola University, Ado Ekiti, Nigeria  
Email: [info@ogeesinstitute.edu.ng](mailto:info@ogeesinstitute.edu.ng)

**DISTINGUISHED FELLOWS AND BOARD  
OF DIRECTORS OF OGEES INSTITUTE**

**PRESIDENT AND FOUNDER**

Aare Afe Babalola, OFR, CON, LL.D, D.Litt, SAN

**CHAIRMAN OF THE BOARD, OGEES INSTITUTE**

Odein Ajumogobia, SAN

**MEMBERS OF THE BOARD**

Sir. Remi Omotoso

Dr. Emmanuel Ibe Kachikwu

Dr.Chinyere Ozumba

Dr.Olu Oluleye

Joseph Oluwatomisin

Elizabeth Preye Joseph-Obene

Tony Agbojo

**DIRECTOR, OGEES INSTITUTE**

Prof. Damilola S. Olawuyi

## EDITORIAL BOARD

PROF MARIE-CLAIRE CORDONIER  
SEGGER  
Ph.D (Oxford), LL.M (Yale), LL.B  
(McGill)  
Senior Director, Center for  
International Sustainable  
Development Law, Montreal  
Canada

PROF ALASTAIR R. LUCAS Q.C.  
B.A., LL.B. (Alberta.), LL.M.  
(British Columbia)  
Professor and former Dean  
Faculty of Law, University of  
Calgary, Canada

PROF MELDA KAMIL ARIADNO  
LL.M (Washington), Ph.D  
(Washington)  
Associate Professor, Faculty of Law,  
University of Indonesia

PROF FRÉDÉRIC MÉGRET  
LL.B (London), LL.M (France),  
Ph.D (Geneva)  
Associate Professor of Law, Faculty  
of Law  
McGill University, Montreal,  
Canada

PROF UCHÉ EWELUKWA  
LL.M (Harvard), SJD (Harvard)  
Professor of Law, University of  
Arkansas School of Law  
United States of America

PROF LAWRENCE ATSEGBUA, SAN  
LL.M (Alberta), LL.M (London)  
Professor of Law, University of Benin

PROF 'LANRE FAGBOHUN, Ph.D  
Chike Idigbe Distinguished Professor  
of Law, & Director of Studies,  
Nigerian Institute of Advanced Legal  
Studies

PROF ADEOLA ADENIKINJU  
B.Sc (Econ), M.Sc (Econ), Ph.D  
(Ibadan)  
Professor of Energy Economics and  
Director, Centre for Petroleum  
Energy and Law  
University of Ibadan

PROF RANDALL S. ABATE  
B.A. (Rochester), J.D. and M.S.E.L.  
(Vermont)  
Professor of Law and Director,  
Center for International Law and  
Justice  
Florida A&M University,  
United States

PROF YINKA OMOROGBE  
LL.B, LL.M (LSE)  
Nabo Graham Douglas  
Distinguished Professor of Law  
Nigerian Institute of Advanced Legal  
Studies

MARGARETTE MAY MACAULAY  
LL.B (Holborn College, London)  
Former Judge of the Inter American  
Court of Human Rights

DR. EBENEZER I. ADODO  
LLM, PhD (National University of  
Singapore)  
University of Surrey  
United Kingdom



PROF. ADEMOLA POPOOLA  
Professor of International Law  
Obafemi Awolowo University, Ife  
Nigeria

PROF. EZENDU ARIWA  
FBCS, CITP, SMIEEE, FHEA, PhD  
Associate Professor and Course  
Leader for Business Information  
Technology Management  
London Metropolitan University, UK

BUKOLA FATUROTOI  
LL.M (LSE), LL.M (Robert Gordon),  
Senior Lecturer and Course Leader  
for MBA Oil and Gas Programmes  
Robert Gordon University, Aberdeen  
Scotland

PROF. KOLAWOLE O. ODEKU, PhD  
School of Law, University of  
Limpopo  
South Africa

PROF. DAMILOLA S. OLAWUYI  
LL.M (Calgary), LL.M (Harvard), PhD (Oxford)  
Editor-in-Chief, Journal of Sustainable Development Law and Policy

## **EDITORIAL COMMITTEE**

### **GUEST EDITOR FOR THIS ISSUE**

Dr. Chilenye Nwapi, LL.M (Calgary),  
Ph.D (British Columbia)

### **EDITOR-IN-CHIEF**

Professor Damilola S. Olawuyi  
LL.M (Calgary), LL.M (Harvard), Ph.D  
(Oxford)

### **MANAGING EDITOR**

Omolola Olarinde  
B.Sc (Romania), M.Sc (Ibadan)

### **ASSOCIATE EDITORS**

Professor Bayo Oluduro, MPhil (Ife),  
Ph.D (Gent)  
Dr. Rhuks Ako, MPhil (Ife), Ph.D (Kent)  
Dr. Chilenye Nwapi, LL.M (Calgary),  
Ph.D (British Columbia)  
Dr. Walters Nsoh, M.Sc (Hull), Ph.D  
(Surrey)  
Dr. Abosede Babatunde, M.Sc (Ibadan)  
PhD (Ibadan)

### **ASSISTANT EDITORS**

Ayobami Olaniyan, LL.M (Aberdeen)  
Ifeoluwayimika Bamidele, LL.M  
(Liverpool)  
Adure Uzo-Peters, LL.M (Cambridge)

### **STATUTES AND CASE NOTE EDITOR**

Damilola Odetola, BCL (Oxford)

### **EDITORIAL OFFICE**

Moronkeji Kolawole, *Editorial Secretary*  
Tosin Adewunmi, *Editorial Assistant*

# CONTENTS

<i>Editorial Comment</i>	xiii
1. New Directions in African Developmentalism? The Emerging Developmental State in Resource-Rich Africa <b>Sara Ghebremusse</b>	1
2. When Policy is Not Enough: Prospects and Challenges of Artisanal and Small-Scale Mining in South Africa <b>Pontsho Ledwaba, Kgothatso Nhlengetwa</b>	25
3. The Clash of Property and Environmental Rights in the Niger Delta Region of Nigeria <b>Sunday Bontur Lugard</b>	43
4. Emerging Practices in Community Development Agreements <b>Jennifer Loutit, Jacqueline Mandelbaum, Sam Szoke-Burke</b>	64
5. The Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector in Nigeria <b>Adedoyin Akinsulore</b>	97
6. Periodic Review in Natural Resource Contracts <b>Jacky Mandelbaum, Salli Anne Swartz, John Hauert</b>	116
7. The Feasibility of Implementing the United Nations Guiding Principles on Business and Human Rights in the Extractive Industry in Nigeria <b>Oyeniye Abe</b>	137
8. Realising the Africa Mining Vision: The Role of Government-Initiated International Development Think-Tanks <b>Chilenye Nwapi</b>	158
9. The Civil Society and the Regulation of the Extractive Industry in Nigeria <b>Rhuks Ako, Eghosa O. Ekhatior</b>	183
<b>COMMENTARY</b>	
10. Judiciary and Sustainable Development: Perspectives of a Brazilian Federal Judge <b>Gabriel Wedy</b>	204

## EDITORIAL COMMENT

I am pleased to present this Special Issue of *The Journal of Sustainable Development Law and Policy*. This edition focuses exclusively on issues of sustainable development in extractive investments and projects in the Global South.

The extractive sector (oil, gas and minerals) constitutes a major share of exports and tax revenues for countries in the Global South, a region richly endowed with mineral assets that are essential for modern production and consumption. Africa, for instance, hosts over two-thirds of the world's reserves of platinum, essential in the electronics industry. More than half of global coal deposits as well as more than a third of global iron ore deposits essential for energy and steel production are to be found in Asia. Over half of the global copper production takes place in Latin America. These resources present both opportunities and challenges to countries in the Global South. While some countries have leveraged extractive resources to achieve sustainable and equitable human development, other resource-rich countries in the Global South, such as Nigeria, have been the epicentre of oil-related violent conflicts, environmental pollution, imbalanced power relations and inequalities across gender and geography. Other sources of conflict include forced relocation and displacements as well as the erosion of democratic ethos. What makes the difference between these two categories of countries is the design and implementation of legal, fiscal and institutional frameworks for the transparent, effective and accountable distribution of revenues from the resources.

This journal invited submissions for this special issue on “Using Extractive Resources to Boost Domestic Economic Transformations: Perspectives from the Global South”. Although authors were free to choose any topic related to the broad theme, the journal expressed particular interest in recent developments in the Global South or best practices from other parts of the world that could inform legal and policy reform to engender transparent, effective and accountable distribution of revenues from extractive resources in the Global South. The journal received several submissions, each dealing with a different facet of the theme. After a painstaking peer-review process, ten submissions were accepted for publication.

This Issue begins with Sara Ghebremusse's submission, where she considers how recent natural resource-related policy initiatives taken by the African States fit into the developmental state framework that was used to study the

rationale behind the success of East Asian States after World War II. Ghebremusse's central argument is that while these initiatives are emblematic of the developmental state, they have yet to take full root in Africa given that they have not been fully aligned to address good governance and democratic challenges in the continent. Pontsho Ledwaba and Kgothatso Nhlengetwa take on mining policy in South Africa. They explore several programmes and initiatives introduced by the South African government within the past two decades to promote artisanal and small-scale mining. They argue that those policy interventions mostly failed to advance the growth of the sub-sector. Their article focuses on the lessons South Africa can learn from the experiences of the past two decades.

Property and environmental rights claims are at the centre of Sunday Lugard's contribution. He posits that the best way to address the clash is by ascribing "collective" rather than "private" property rights to the swaths of land on which oil exploration takes place. Jennifer Loutit, Jacqueline Mandelbaum and Sam Szoke-Burke's joint submission then explores how issues of property rights, community participation, and stakeholder engagement are increasingly being addressed through community development agreements. Adedoyin Akinsulore introduces the issue of corporate social responsibility (CSR) into the theme. She explores how CSR has been legislated under the Nigerian Minerals and Mining Act 2007 with an interest in the impact of such legislation on the promotion of CSR. Her main argument is that because of this CSR legislation, mining corporations in Nigeria are no longer permitted to make CSR a philanthropic activity.

Jacky Mandelbaum, Salli Swartz and John Hauert then take us back to the potentials and limitations of natural resource-related investment contracts in addressing issues of community participation, corporate social responsibility and stakeholder engagement. The authors discuss increasing demands, particularly by States, for re-negotiation of such contracts, noting that such demands introduce uncertainty into natural resource investments. They outline the problems that arise from periodic review as well as the strengths and weaknesses of both contractually permitted periodic and at-request review, and advocate for a new approach to the periodic review.

Oyeniye Abe's article immediately takes the discussion to the regulation of multinational extractive companies through the UN Guiding Principles developed by John Ruggie in 2008. He explores the different ways in which States can implement the Guiding Principles, as well as how corporations can integrate human rights principles into their business practices. Rhuks

Ako and Eghosa Ekhaton look at the role of Civil Society Organizations (CSOs) in regulating the extractive industry, with a specific focus on Nigeria. They argue that CSOs put pressure on governments and corporations to promote transparency and accountability in the management of extractive revenues and respect for human rights. They examine both theoretical and practical frameworks that explain the evolution of the regulatory role of CSOs in relation to the extractive sector. Chilenye Nwapi's article then examines the Africa Mining Vision (AMV), which represents "a common voice for Africa" in the realisation of how Africa's mineral potential could be achieved. Nwapi focuses specifically on how the activities of think-tanks, established through the initiative of foreign governments to promote their economic diplomacy, can contribute to the realisation of the AMV. His main argument is that while these think-tanks put the interests of their countries first, African States can still leverage some of the capacity building programmes established by the think-tanks to advance the realisation of the AMV.

The contributions are rounded off with Gabriel Wedy's legal commentary on the role of the judiciary in promoting sustainable practices in the extractive sector. Wedy draws on his professional experience as a federal judge in Brazil to discuss how judges can foster sustainable practices in resource development. He links the role of the judiciary to the authority of judges to interpret the constitution and laws to sanction or stop projects that have the potential to pollute the environment.

In all, although the articles in this special issue do not exhaust the myriad of issues surrounding extractive resource development in the Global South, they address several of the most important issues. The publication of this special issue would not have been possible but for the efforts of members of the editorial team and our external reviewers who volunteered their time and intellect to enhance the quality of the articles selected. Their immense contribution is gratefully acknowledged.

Truly yours,

Chilenye Nwapi LL.M (Calgary), Ph.D (British Columbia)  
Issue Editor and Senior Fellow Institute for Oil, Gas, Energy, Environment  
and Sustainable Development  
Afe Babalola University, Ado Ekiti, Nigeria  
T +234 81 40000 988 International: +1 587 719 0955  
E: cnwapi@ogeesinstitute.edu.ng